IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 399 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANGUBEN AMBALAL PATEL

Versus

PARSHWANATH BUILDERS

Appearance:

1. Appeal from Order No. 399 of 2001

MR NM KAPADIA for Petitioner No. 1

RULE SERVED for Respondent No. 1,4-5

SERVED BY AFFIX.-(R) for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 24/03/2004

ORAL JUDGEMENT

This Appeal From Order is filed against the order

passed by the learned 3rd Joint Civil Judge (S.D.), Surat below an application Exh.5 in Special Civil Suit No. 381/1998 on 18.08.2001 whereby the interim injunction was refused.

2. It is the case of the appellant that the appellant has purchased constructed area i.e. Bungalow No. A/7 situated at Revenue Survey No. 107/A in Someshwarnagar Co. Op. Service Society Ltd. near Bhatar Char Rasta, Udhna Magdalla Road in the city of Surat. It is stated in the memo of appeal that the respondent No.4 who is the original defendant No.1 was the owner of Survey No. 107/A and he has admitted in his reply dated 20.06.1997 that he has given the said land for the purpose of development and construction to the respondent Nos.1 to 3 - original defendant Nos.1 to 3. It is also the case of the appellant that the appellant had paid Rs. 1,46,000/- vide cross cheques to the respondent No.2 for the purpose of purchasing the Bungalow and in the year 1989, the actual and peaceful possession of the bungalow was also given to the appellant. The appellant has also paid Rs. 38,800/- in cash to the respondent No.4. The appellant has produced all these documentary evidence in support of her case before the Trial Court and before this Court also. The appellant's name appeared in the record of Surat Municipal Corporation with effect from 01.04.1989. Her name is also inserted in the record of Surat Electricity Company and electric connection was given to the appellant. The appellant has also produced certificate dated 10.09.1990 issued by Someshwarnagar Co. Op. Service Society Ltd. regarding the actual possession of the appellant of the Bungalow since years.

3. Despite the aforesaid documentary evidence, the sale deed was not executed in favour of the appellant and hence, Special Civil Suit No. 381 of 1998 was filed before the learned Civil Judge (S.D.), Surat and in that suit, an application for interim relief was filed seeking relief against the present respondents not to disturb the possession of the appellant and not to transfer the suit property in favour of any other person. Despite the fact that the learned Civil Judge has accepted the possession of the appellant, interim relief was refused and being aggrieved by the said order, present Appeal From Order is filed before this Court.

4. This appeal was admitted and interim relief was

also granted. On 19.11.2003, this Court has recorded several dates whereby the respondents were sought to be served. Despite the service of notice, no one appears on behalf of the respondents till this date. This Court has observed that on 20.10.2001, notice was served on the respondent Nos.2 & 3 by affixing i.e. substituted service. On 02.01.2002, respondent No.4 was served. On 04.01.2002, respondent No.5 was served. On 06.04.2002, the respondent No.1 was served by substituted service. On 08.10.2002, respondent No.1 was served by substituted service. After recording all these dates, the Court has come to the conclusion that since the application was not opposed, interim relief granted was confirmed and Civil Application was disposed of on 19.11.2003.

5. Today, when the matter is taken up for final hearing, nobody appears on behalf of respondents.

6. Mr. N.M. Kapadia, learned advocate appearing for the appellant has submitted that the learned Trial Judge has considered that there was a prima facie case in favour of the appellant and that there was a balance of convenience in favour of the appellant. As a matter of fact, all documentary evidences were produced before the Trial Court and the appellant has also established that the possession of the suit property was with the appellant for the last many years and that fact was also believed by the learned Trial Judge. Despite this fact, interim injunction was refused. In the appeal filed before this Court, the appellant was protected by way of granting interim relief and it is already in force. The respondent has not taken any care to contest this Appeal From Order. It appears from the record that even before the Trial Court, injunction application was not seriously contested.

7. Considering the above facts and circumstances of the case and after hearing the learned advocate appearing for the appellant and after going through the documentary evidence and averments made in the memo of appeal, this Court is prima facie satisfied that the interim injunction granted by this Court should continue till the disposal of the suit. In this view of the matter, this Appeal From Order is allowed. The impugned order passed by the learned Trial Court below application Exh.5 in Special Civil Suit No. 381 of 1998 is hereby quashed and set aside. Interim injunction granted by this Court will be continued till the final disposal of the suit and

Trial Court is directed to decide and dispose of the suit as expeditiously as possible, preferably within a period of six months from the date of receipt of the writ from this Court or from the date of receipt of certified copy of this order, whichever is earlier. This Appeal From Order is allowed. Direct Service is permitted.

[K.A. PUJ, J.]

#Savariya#

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